IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1955.

No. 278

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor,

Petitioner,

vs.

JOSEPH T. BUDD, JR., and FLORENCE W. BUDD, co-partners, doing business as J. T. BUDD, JR., AND COMPANY, KING EDWARD TOBACCO COMPANY OF FLORIDA, and MAY TOBACCO COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Brief for American Farm Bureau Federation as Amicus Curiae.

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Statement.

The American Farm Bureau Federation is a non-profit corporation organized under the laws of the State of Illinois with its principal office in Chicago, Illinois. It is a voluntary organization of more than 1,600,000 farm and ranch families in the 48 States and Puerto Rico. It was organized in 1919 for the purpose of promoting, protecting, and representing the business, economic, social, and educational interests of the farmers of the nation and to develop agriculture.

The interest of the American Farm Bureau Federation in this case derives from the fact that the decision of the District Court, which Petitioner seeks to have this Court approve, would deprive many farmers of this nation of the agriculture exemption with respect to certain activities which clearly fall within the intent, language and purpose of the exemptions provided by the Fair Labor Standards Act, for Agriculture. Restrictions upon application of these exemptions have far-reaching effects upon the future of agriculture.

In adopting the Fair Labor Standards Act, Congress never intended that the Wage and Hour Division of the Department of Labor would control, direct, have dominion over, or have any effect upon agricultural operations or pursuits. Petitioner's brief clearly shows an unauthorized attempt by the Administrator to accomplish this improper objective.

As used in the Petitioner's brief, "RB" references will be to the Budd Record, while "RK" references will be to the King Edward and May Record.

ARGUMENT

I.

Bulking of tobacco is a practice within the definition of agriculture under Section 3 (f) of the Act and therefore employees engaged in such bulking operations are exempt from wage and hour provisions under Section 13 (a) (6).

(a)

Section 3 (f) contains a broad, comprehensive, and far-reaching definition of the term "Agriculture."

Congress defined "agriculture" in Section 3 (f) as follows:

> (f) "*Agriculture*" *includes farming in all its branches* and *among other things includes* the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry, or lumbering operations) *performed* by a farmer or on a farm *as an incident to or in conjunction with such farming operations, including preparation for market*, delivery to storage or to market or to carriers for transportation to market. (Emphasis supplied).

(b)

Legislative history of Sections 13 (a) (6) and 3 (f) confirms that tobacco bulking operations were intended to be exempt.

As the bill which finally became the Fair Labor Standards Act worked its way through the legislative process to final passage, repeated assurances were given by men-

bers of the Congress that a full exemption had been accorded to all activities performed by the farmer or on the farm in connection with the growing and marketing of farm crops. All agreed that the agricultural exemption was to be plenary and that all agriculture without exception was excluded from the coverage of the Act.

It is obvious from the legislative history that the bill never would have become law but for such assurances and the consequent feeling on the part of the legislators that all agriculture was in fact exempt. 83 Cong. Rec., 7393, 9257.

The bill (S. 2475) was introduced in the Senate on May 24, 1937, and was referred to the Senate Committee on Education and Labor, which wrote the broad definition of "agriculture". S. 2475 as reported in the Senate, July 6, 1937, Sec. 2, pp. 50-51. Senator Black, Chairman of the Senate Committee in charge of the bill, stated to the Senate that the bill specifically excluded workers in agriculture of all kinds and of all types. 81 Cong. Rec., 7648. When he made this statement, the agricultural definition in the bill, insofar as it related to practices incidental to farming operations, limited the exemption to those practices "ordinarily" performed by a farmer as an incident to farming operations.

In various colloquies between Senator Black and other Senators, the former made it clear that the exemption applied to all the things the farmer did with reference to producing his crops and marketing them—whether the crops were cotton, fruits or vegetables, or any other commodity. 81 Cong. Rec., 7657, 7658, 7659.

When the bill, as amended and passed by the Senate, went to the House of Representatives, the House Labor Committee rewrote the agricultural exemption and pur-

posely struck the word "ordinarily" from that part of the definition relating to incidental practices. H. Rep. No. 1452, 75th Cong., 1st Sess., pp. 4-5, 11. The word "ordinarily" never again reappeared in the definition. The bill as it was first reported by the House Labor Committee was recommitted to such Committee and on April 21, 1938, another draft of S. 2475 was reported to the House. As so reported, once again the definition of "agriculture" was broadened by adding to the incidental practices portion of the definition the activities of "*preparation for market*", "delivery to storage", and "delivery * * * to carriers for transportation to market." H. Rep. No. 2182, 75th Cong., 3rd Sess., p. 2. In this form the bill passed the House.

The two Houses of Congress then held a conference on the bill. In such conference they not only retained every amendment that had previously broadened the definition of "agriculture" but they went still further. They broadened the exemption still more by exempting all practices performed by a farmer or on a farm "in conjunction with such farming operations." 83 Cong. Rec., 9253-9254.

When the conference report was debated in the Senate, Senator Thomas of Utah, who had succeeded Senator Black as Chairman of the Senate Committee on Education and Labor, and was chairman of the Senate conferees, stated that agriculture was exempted from the operation of the bill, that he did not know of any kind of agriculture that was included in the bill, and that the definition of agriculture was purposely made all inclusive. 83 Cong. Rec., 9162-9163.

This Court has said that "Congress exempted agriculture from the terms of the Fair Labor Standards Act in broad, inclusive terms" and that "The exemption was

meant to embrace the whole field of agriculture, and sponsors of the legislation so stated, 81 Cong. Rec., 7648, 7658" (*Mancja* v. *Waialua Agricultural Co.*, 349 U. S. 254, 259, 260).

This Court further stated in the *Waialua* case, in commenting on the legislative history of the agricultural exemption (p. 260):

> "Although this language was described by those in charge of the bill in the Senate as 'perhaps, the most comprehensive definition of agriculture which has been included in any one legislative proposal,' 81 Cong. Rec., 7648, its coverage was broadened until it became coterminous with the sum of those activities necessary in the cultivation of crops, their harvesting, and their 'preparation for market, delivery to storage or to market or to carriers for transportation to market.'"

(c)

Bulking is an essential farming practice in preparing tobacco for market.

The Court of Appeals correctly concluded that everything done by these farmers was essential for the marketing of their crops, and that the work of their employees, in the preparation for market of the leaf grown exclusively on their farms, constitutes "practices performed by a farmer as an incident to or in conjunction with such farming operations, including preparation for market," within the meaning of Section 3 (f). RK 93.

The language of Section 3 (f) could not be more clear to evince an intent to exempt all activities performed by the farmer or on the farm in connection with growing and marketing the farm's crops.

Practically every farmer in the United States, whether large or small, is concerned with preparing an agricul-

tural or horticultural commodity for market. Almost all farmers, as part of their harvesting operations, haul their crops to a storage place or a processing plant located either on or off the farm or to some market. A great many of them conduct extensive processing operations upon their own crops. For example, many fruit and vegetable farmers pack and can their own fruits and vegetables; many cotton farmers gin their own cotton; many poultry and hog farmers slaughter and dress their poultry and hogs. The apple farmer, for example, may haul his apples to a storage place on the farm or he may sort, wrap and pack the apples and otherwise prepare them for market or he may process the apples in one form or another. Unquestionably, when so performed, these are operations performed by a farmer or on a farm as an incident to or in conjunction with farming operations. *Farmers Reservoir and Irrigation Co.* v. *McComb*, 337 U. S. 755, 763, 766, note 15; *Redlands Foothill Groves* v. *Jacobs*, 30 F. Supp., 995, 1006; *Dannat* v. *Pinchbeck*, 158 F. (2d) 882, 883; *Addison et al* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 612; *National Labor Relations Board* v. *John Campbell, Inc.*, 159 F. 2d. 186, 187.

(d)

Exemption is not destroyed because bulking practice is time-consuming, requires valuable equipment, and knowledge of operation.

The Petitioner argues that tobacco bulking is a complicated, tedious, difficult and even scientific operation as distinguished from the actual growing of tobacco. We cannot agree. In fact, tobacco bulking is an easier, simpler task than the actual production of the crop on farms.

According to the Record, nothing is added to or taken from the tobacco during this bulking operation, except

through the natural process of evaporation and fermentation, other than sprinkling with water or kasing (RK 52).

The contention of the Petitioner that the bulking of tobacco requires as much as 12 months time is not determinative, or of any importance, to the questions involved in this proceeding. Such period of time is no more than is required for the actual growing or production on farms of many agricultural products.

Considering this type of argument by the Petitioner, we would not be surprised to see the Administrator claiming that the actual growing of Type 62 shade leaf tobacco is not an exempted agricultural activity because it is grown in fields completely enclosed and covered with cheesecloth shade.

(e)

The Department of Labor has held the activities in question to be exempt under Section 13 (a) (6).

Interpretative Bulletin No. 14, issued in August, 1939, (3 C.C.H. Labor Law Reporter 24,488), in construing the agricultural exemption, stated in paragraph 10 (b):

> "(b) The term 'preparation for market' must be treated differently with respect to various commodities. *The following* activities, among others, when performed by a farmer, seem to be included within the term:
>
> 1. Grain, seed, and forage crops.—Weighing, binning, stacking, cleaning, grading, shelling, sorting, packing and storing.
>
> 2. Fruits and vegetables.—Assembling, binning, ripening, cleaning, grading, sorting, drying, preserving, packing, storing, and canning.
>
> 3. Nuts (pecans, walnuts, peanuts, etc.).—Grading, cracking, shelling, cleaning, sorting, packing, and storing, unshelled nuts; and performing the same

operations except cracking and shelling, upon the nut meats.

4. Sugar.—Manufacturing raw sugar, cane, or maple syrup and molasses.

5. Eggs.—Handling, cooling, grading, and packing.

6. Wool.—Grading and packing.

7. Dairy products.—Salting, printing, wrapping, packing and storing butter; ripening, molding, wrapping, packing, and storing cheese; and canning or packing any other dairy product.

8. Cotton.—Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

9. Nursery stock.—Handling, wrapping, packaging, and grading.

10. Tobacco.—Handling, drying, bulking, stripping, tying, sorting, stemming, packing, and storing.

11. Livestock.—Handling and loading.

12. Poultry.—Culling, grading, cooping, and loading.

13. Honey.—Assembling, extracting, heating, ripening, removing comb, straining, cleaning, grading, weighing, blending, packing, and storing.

14. Fur.—Removing the pelt, scraping, drying, putting on boards and packing."

According to a press release issued by the Department at the same time as *Interpretative Bulletin* No. 14, the Department's interpretations of the agricultural exemption in the Act were made only after lengthy conferences with representatives of employers, employees and other interested parties. Authorities of the United States Department of Agriculture were also consulted. Much time was devoted by the Department's attorneys to a study of the legislative history of Section 13 (a) (6). The Department also had its economists make economic studies in

order to assist in a proper determination of the scope of the exemption. It was only after these lengthy investigations and discussions that the Department announced its opinions on the subject. Such opinions were widely circulated through *Interpretative Bulletin* No. 14, press releases and other releases to the various labor law publications.

Since "bulking" was listed under "Tobacco" (item 10), tobacco farmers have had every reason to believe that this was one of the exempt activities, even within the Administrator's restricted application of the exemption provisions of the Act.

II.

Employees engaged in tobacco bulking are exempted under both sections 13 (a) (6) and 13 (a) (10) of the Act.

(a)

As applied to the facts in this case, Section 13 (a) (6) exempts the employees concerned herein because the Act clearly provides for such exemption.

Authoritatively paraphrased, the Act provides that the provisions for minimum wages and maximum hours shall not apply to any employee engaged in agriculture. Application of the statutory definition of "agriculture" to tobacco bulking has already been discussed in this brief. (See supra, p. 6)

(b)

Bulking of tobacco is an exempt operation under Section 13 (a) (10).

We cannot agree with the Petitioner's argument that bulking of tobacco is more of an industrial process than

an agricultural operation and, therefore, is not covered under Section 13 (a)(10).

The operations enumerated in this Section (e.g., handling, packing, storing, processing, drying), cover a very comprehensive field in agriculture. This was obviously intended by Congress.

On May 24, 1938, the following statements were made by Congressman Bierinann during consideration of his amendment (which became the exemptions in Section 13 (a) (10) to the Wage and Hour Bill):

> "This bill is aimed at sub-standard labor conditions, and I submit that any Member of this House who is familiar with the kind of institution that this amendment I have offered is aimed at will agree with me when I say that sub-standard labor conditions do not exist in these institutions. In an amendment I inserted in the Record yesterday I included the word 'processing.' I call attention to the fact that in the pending amendment that word is stricken out. I struck it out for the reason that some Members thought that processing would include the making of cotton and wool into textiles, and rubber into finished products; and a long list of things of that kind. The amendment I have offered includes only the first processing of things of that kind. *The amendment I have offered includes only the first processing of things that come off the farm. The important point is that the farmer pays the bill for this processing.*" (Emphasis supplied) (83 Cong. Rec. 7401)

During consideration by the Senate of the 1949 Amendments to the Act, Senator Pepper made the following statement in answer to an inquiry concerning the scope of the existing exemptions in Section 13(a)(10):

> "In other words, the processing of agricultural commodities which occurs within the area of production is at the present time exempt from the min-

minimum wage and maximum hours provisions of the law." (95 Cong. Rec., 14869).

If tobacco bulking was intended by Congress to be considered an industrial process, then why did the Department of Labor include bulking in its Interpretative Bulletin No 14, issued in August, 1939 as one of the exempt activities "by a farmer in preparing a commodity for market" (supra, page 9).

It is a well recognized principle that: "The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover" (*Lynch v. Alsworth-Stephens Co.*, 267 U.S. 364, 370). Administrative orders, like statutes, are not to be given strained and unnatural constructions. The language of a regulation should be considered as intended to guide and not to entrap those who are governed by it. *Barron Cooperative Creamery et al. v. Wickard*, 140 Fed. 2d. 38, 43; 44.

(c)

Regulations of the administrator defining "Area of Production" are not within the plainly designated intention of Congress and are therefore inconsistent with the Act.

The Court of Appeals correctly concluded that the Administrator exceeded his authority in excluding from the area of production, "any city, town, or urban place of 2,500 or greater population" R11 163.

It is recognized that in those exemptions which depend upon administrative action, the Administrator must "properly weigh and synthesize" all the factors relevant to the general purposes of the Act. *Addison v. Holly*

Hill Crest Products, Inc., 322 U.S. 607. However, his power and freedom of expression are always limited by the mandates of Congress, as was emphasized by this Court in the *Hollis Hill* case. He can neither enlarge nor contract the intended exemption area.

The legislative history of the Act clearly indicates that it was not the intent of Congress for the Administrator to adopt such a restrictive definition of area of production. This is evidenced by the comments made by Senator Schwellenbach and Representative Biermann, who sponsored amendments providing for the exemptions within the "area of production" which were later incorporated into Section 13 (a) (10) of the Act.

The following statements were made by Senator Schwellenbach on July 30, 1937, in answer to questions concerning his proposed amendments:

Mr. Connally: "Mr. President, I should like to ask the Senator from Washington a question. Would not the effect of his amendment be to exempt all industrial warehouses and packing plants in apple territory? There is no limit. The condition is that they are packing plants; and if they are, they are exempt.

Mr. Schwellenbach: "If a packing plant is working upon fresh fruits or vegetables, in their raw or natural state, within the immediate production area, it would be exempt.

Mr. Connally: "My understanding is that the largest apple packing plant in the world is located at Winchester, Va., right in the heart of a great apple producing region. That would be exempt, would it not?

Mr. Schwellenbach: "If the work done in that plant is as described in the amendment it would be exempt." (81st Cong. Rec. p. 7577.)

During the debate of Congressman Biermann's amendment (see *supra*, p. 11), he read to members of the House the following paragraphs from a letter that he had received from Mr. Edward O'Neal, then President of the American Farm Bureau Federation:

> "We believe the bill should be clarified so as to assure the exemption of employees in such agriculture and horticulture industries in rural areas."
>
> "Failure to exempt these operations when performed in rural areas where conditions are so greatly different from the situation in large industrial and urban centers, will result in increased costs of processing and handling these products which will be reflected back in lower prices paid to farmers." (83 Cong. Rec. 7402).

After reading the first paragraph, Mr. Bierman commented, "That is all my amendment takes in." Mr. Biermann's amendment was adopted by a vote of 159 to 134 (83 Cong. Rec., May 25, 1948, pg. 7407).

The above statement by Senator Schoeppel that Winchester, Va., would be in the "area of production" is of utmost importance in view of the fact that the population of Winchester in 1940, *was* 12,095. (Census of Population, 1950, Volume II, Pt. 1) Irrespective of any arguments as to what commodities or activities are covered by Section 13 (a)(10), there can be no question concerning the intent of Congress to include such cities as Winchester with a population of 12,000 as being within the "area of production." In fact, we can find no evidence that Congress intended that a population test be used in determining "area of production."

Contrary to what the Petitioner contends, the question of the 2,500 population test was not at issue in the *Holly Hill case*. This Court, in holding invalid the Administrator's exclusion of establishments having, in excess of seven employees, stated:

"Concluding, then, that when Congress granted exemptions for workers within the 'area of production' (as defined by the Administrator)' it restricted the Administrator to the drawing of geographic lines, even though he may take into account all relevant economic factors in the choice of areas open to him, the regulations which made discriminations within the area defined by applying the exemption only to plants with less than seven employees are ultra vires." (322 U.S. 619).

We recognize the difficulty involved in preparing a definition of the "area of production" which will not be subject to some criticism. This problem was pointed out in a letter dated June 17, 1949, from the then Secretary of Agriculture to the Chairman of the House Committee on Education and Labor during the time that consideration was being given to the amendments of the Act. This letter reads in part as follows:

"I do not think I need to set forth in detail the difficulties of defining the term 'area of production.' This Department is aware of these difficulties, having been consulted by the Secretary of Labor prior to the issuance by the Administrator of the Wage and Hour Division of the present regulations under the Fair Labor Standards Act dealing with this matter. The subject has been one of fairly extensive discussion and correspondence between the Department of Labor and the Department of Agriculture. As a result of these discussions, I am in agreement with the Administrator that the 'area of production' concept is inherently inequitable and that corrective action should be taken by Congress to eliminate these inequities in the interest of sound public policy." (95 Cong. Rec., p. 12436).

Thus, the Secretary was saying that the definition was admittedly inequitable. The Secretary also advised Congress that he did not favor any transfer of authority to

the Secretary of Agriculture with respect to the definition of "area of production."

We cannot agree with the argument of the petitioner that Congress has, in effect, approved the Administrator's definition since it did not amend Section 13 (a)(10) during its consideration of the Fair Labor Standards Amendments. The legislative history of the amendments to the Act in 1949 shows that Congress was not satisfied with the present definition of the Administrator. 95 Cong. Rec., pp. 14869, 14870. During the consideration of the Conference Report, Senator Pepper made the following statement:

> "I think it is the concensus of the opinion of the conferees that they hope the Wage and Hour Administrator will constantly endeavor to improve the definition of 'area of production,' and, especially in the case of cotton, that he will apply it as liberally as possible." (95 Cong. Rec., October 18, 1949, p. 14869).

However, as this Court has said, "But it is no warrant for extending a statute that experience may disclose that it should have made more comprehensive" (*Holly Hill case*, 322 U.S. 6 7). The natural meaning of words cannot be displaced by reference to difficulties in administration. (*Commonwealth v. Grunseit* (1943) 67 C.L.R. 58, 80).

There is no substance in Petitioner's argument that Congress confirmed and ratified the Administrator's definition of area of production when it adopted Section 16 (c) of the Fair Labor Standards Amendments of 1949. See Brief for Secretary of Labor, pp. 34, 35. This congressional action merely concluded that existing regulations which were consistent with the Act should remain in effect unless subsequently amended by the Administrator. Any order, regulation, or interpretation inconsistent with provisions of Fair Labor Standards Act was

expressly excepted. 63 Stat. 920. This action cannot be considered as a confirmation or ratification of the definition. Passage of the 1949 amendments through the Congressional legislative process was not the testing ground for the propriety, sufficiency, adequacy or legality of any regulation of the Administrator.

According to the Court of Appeals, "the legislative history of Section 13 (a) (10) makes clear that its primary purpose was to prevent discrimination against the small farmer." RB 164. See Senator Schwellenbach's comments, RB 164. If the present definition which excludes towns of 2,500 or more from the "area of production" is upheld by this Court, then it is entirely possible that the future course of agriculture will be in the direction of larger-type farming operations, requiring substantial financial resources, so that many of these activities covered in Section 13 (a) (10) can be performed on the farm.

Continued enforcement of the regulation under the Administrator's definition of "area of production" may well cause persons, such as the respondents here, to change or move their tobacco bulking operations to other locations. Congress never authorized such major social, economic, or political changes in agriculture of this country to be accomplished under guise of the Fair Labor Standards Act.

We, therefore, urge this Court to declare the Administrator's definition to be invalid and that he be requested to redefine "area of production" to conform with the clearly expressed mandate of Congress. This would follow the position taken by this Court in the *Walling* case:

> "We agree therefore with the Circuit Court of Appeals in holding invalid the limitations as to the number of employees within the defined area. But we cannot follow that Court in deleting this part of the

administrative regulation and, by applying what remains of the definition exempting Holly Hill's employees from the requirements of the Act. Since the provision as to the number of employees was not authorized, the entire definition of which that limitation was a part must fall. We can hardly assume that the Administrator would have defined 'area of production' merely by deleting the employee provision, had he known of its invalidity. It would be the sheerest guesswork to believe that the elimination of an important factor in the Administrator's equation would have left his equation unaffected even if he did not here insist upon its importance. It is not for us to write a definition. That is the Administrator's duty." (322 U. S. 618)

Conclusion.

For the foregoing reasons, the tobacco bulking practices and operations described in this case should be held to be exempt from the wage and hour provisions of the Fair Labor Standards Act and, therefore, the judgment of the Court of Appeals should be sustained.

Respectfully submitted,

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